

## **CHAPTER 43-28 DENTISTS**

### **43-28-01. Definitions.**

As used in this chapter and chapter 43-20, unless the context otherwise requires:

1. "Accredited dental school" means a dental school, college, or university accredited by the commission on dental accreditation of the American dental association or its successor.
2. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
3. "Board" means the state board of dental examiners.
4. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.
6. "License" means the right, authority, or permission granted by the board to practice dentistry in this state.
7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

### **43-28-02. Exceptions.**

The provisions of this chapter do not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity may not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.
2. To a student enrolled in and regularly attending any dental college, dental hygiene, or dental assisting program recognized as such by the board, if the student's acts are done in the dental college, dental hygiene, or dental assisting program and under the direct supervision of the student's instructor; or to a student who is in training in any dental program recognized as such by the board and who is continuing the student's training and performing the duties of an extern under the supervision of a dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.
3. To a legally qualified and licensed physician, surgeon, or other practitioner authorized by law, who in emergency cases performs any act within the scope of the practice of dentistry.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician, lecturer, or attendant of an educational program under the auspices of a dental college, a reputable dental society, dental hygienist society, or dental assistant society.
5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, air force, public health service, coast guard, veterans' bureau, or director of the dental division of the state department of health.
6. To a registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant who is applying topical fluoride varnish to an individual and is acting under the direct or general supervision of a physician or licensed dentist if the

- registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant has successfully completed a training program approved by the board.
7. To an advanced practice registered nurse licensed under chapter 43-12.1 who is applying topical fluoride varnish to an individual and is acting within the scope of practice of the advanced practice registered nurse and has successfully completed a training program approved by the board.
  8. To registered dental hygienists, registered dental assistants, qualified dental assistants, and dental assistants practicing within the scope of practice and under supervision as required by chapter 43-20 and by rule.

**43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.**

The state board of dental examiners consists of seven members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998. Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

**43-28-04. Qualifications and appointment of members of the board - Limited vote.**

1. An individual may not be appointed as a dentist member of the board unless that individual:
  - a. Is a dentist licensed and registered under this chapter; and
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
  - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. An individual may not be appointed as the consumer member of the board unless that individual:
  - a. Has been a resident of North Dakota for five years immediately preceding appointment;
  - b. Has no personal or family financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum.**

The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, a member who has at least two years remaining on that

member's term, president-elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem at a rate established by the board and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

#### **43-28-06. Powers of board.**

The board may:

1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this chapter.
2. Examine applicants for licenses or registration to practice dentistry, dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter or rules adopted by the board.
4. Issue subpoenas to require the attendance of witnesses and the production of documentary evidence and may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued must be attested by the secretary who shall affix the seal of the board thereto.
5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.
6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.
7. Enter an agreement with the same professional organization with which the state board of medical examiners has entered an agreement under subsection 6 of section 43-17-07.1.

#### **43-28-07. Expenses of board - How paid - Funds held by secretary-treasurer.**

Repealed by S.L. 1971, ch. 510, § 15.

#### **43-28-08. Records of board - Use as evidence.**

The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it. The records of the board, together with the list of all licensed and registered dentists, are public records and must be open to public inspection at all reasonable times. Such records, or a transcript of the same or any part thereof, under the seal of the board, duly certified by its secretary-treasurer, are competent evidence of the facts therein stated. A certificate of the secretary-treasurer under the seal of the board stating that any person is or is not a duly licensed and registered dentist is prima facie evidence of such fact.

#### **43-28-09. Biennial report.**

The board may submit a report to the governor and the secretary of state in accordance with section 54-06-04.

#### **43-28-10. License and certificate required - Scope of practice.**

A person may not practice dentistry in this state unless that person is a dentist.

#### **43-28-10.1. Requirements for licensure.**

The board may grant a license to practice dentistry to an applicant who has met all of the following requirements:

1. The applicant has a doctorate of dental surgery or doctorate of dental medicine degree from an accredited dental school.
2. The applicant has passed the examination administered by the joint commission on national dental examinations or the national dental examining board of Canada.
3. The applicant has passed a clinical competency examination administered by a regional dental testing service approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
5. Grounds for denial of the application under section 43-28-18 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

#### **43-28-11. Application - Fees.**

An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the board meeting at which it is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule.

#### **43-28-11.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a dentist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

#### **43-28-11.2. Fitness - Criminal history record check - Costs.**

The board may investigate an applicant's or a dentist's fitness, qualification, and previous professional record and performance. The board may seek information sought under this section from recognized data sources, including the national practitioners data bank, data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies. An applicant or a dentist for whom the board is performing an investigation under this section shall cooperate with the board if necessary to access the information sought by the board. The board or the board's investigative disciplinary panels may require an applicant or a dentist who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with a criminal history record check performed under this section are the responsibility of the dentist or applicant.

#### **43-28-12. Examination - Subjects covered.**

Repealed by S.L. 2009, ch. 369, § 31.

#### **43-28-12.1. Regional or other states' examination.**

Repealed by S.L. 2009, ch. 369, § 31.

#### **43-28-12.2. Continuing educational requirement for dentists - Audit.**

Repealed by S.L. 2009, ch. 369, § 31.

#### **43-28-13. When reexamination required.**

Any dentist who does not undertake the actual practice of dentistry within five years from the date of the dentist's license and registration, shall, before engaging in the practice of

dentistry in this state, notify the board of the intention in writing. The board, after a full investigation, may reexamine the dentist as to the dentist's qualifications to practice dentistry in this state, if the board deems such reexamination necessary. The failure of the dentist to give the written notice to the board before engaging in the practice of dentistry in this state is grounds for disciplinary action.

**43-28-14. Reexamination - Fee - Additional education.**

Repealed by S.L. 2009, ch. 369, § 31.

**43-28-15. Licensure by credential review.**

The board may issue a license and certificate of registration to practice dentistry in this state to an applicant who meets all of the following requirements:

1. The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively practicing dentistry in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-28-18 do not exist.
3. The applicant pays to the board the fee determined by the board by rule.
4. The applicant delivers to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that jurisdiction.
5. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant meets any requirement for licensure established by the board by rule.

**43-28-16. Certificate - Displayed in place of business.**

The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business.

**43-28-16.1. Death certificate issuance by dentist.**

Any dentist licensed and registered may issue a death certificate in an emergency, when the cause of death is known to the dentist.

**43-28-16.2. License renewals.**

1. Licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dentist's license is not revoked or grounds for denial under section 43-28-18 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dentist may not practice dentistry.
4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dentist must apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dentist providing proof of medical or other hardship rendering the dentist unable to meet the deadline.

#### **43-28-17. Inactive status.**

Upon payment of a fee determined by the board, a dentist may request to have the dentist's license placed on inactive status. While on inactive status, the dentist may not engage in the practice of dentistry in the state until the dentist applies for reinstatement, pays a renewal fee, and meets any additional requirements established by rule.

#### **43-28-18. Grounds for denial of or disciplinary action against license and certificate.**

The board may deny an application or take disciplinary action against the license and the certificate of registration of any applicant or dentist who has:

1. Engaged in dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Abused, is dependent on, or addicted to the use of alcohol or drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.
6. Been grossly negligent in the practice of dentistry.
7. Engaged in fraud or deceit in obtaining the license or in the practice of dentistry.
8. Disclosed confidential information.
9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a dentist from employing any other dentist or dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to meet minimum standards of professional competence.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed others to perform acts or provide dental services for which they were not licensed or qualified or were prohibited by law or rule from performing or providing.
15. Submitted fraudulent insurance claims.
16. Made any false or untrue statements in an application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.
20. Abandoned the dentist's practice in violation of rules adopted by the board.
21. Failed to report to the board as required under section 43-28-18.1.
22. Failed to practice within the scope of that dentist's education or advanced training as recognized by the board, the American dental association, or other professional entity recognized by the board.
23. Failed to release copies of dental or medical records requested by a patient of record or violated section 23-12-14. Dental records may include any document, charting, study models, doctor's notations, billing information, insurance document or combination of documents that pertains to a patient's medical history, diagnosis,

- prognosis, or medical condition, which is generated and maintained in the process of the patient's dental health care treatment.
24. Advised or directed patients to dental laboratories or dental laboratory technicians for any dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians without first having furnished the dental laboratory or dental laboratory technician a written prescription.
  25. Worked or cooperated with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the referral of laboratory patrons for professional services.
  26. Used the services of a person or entity not licensed to practice dentistry in this state, or constructed, altered, repaired, or duplicated a denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
  27. Violated the code of ethics adopted by the board by rule.
  28. Violated this chapter or rules adopted by the board.
  29. Had the applicant's or dentist's license suspended, revoked, or disciplined in another jurisdiction.

#### **43-28-18.1. Duty to report.**

1. A dentist shall report to the board in writing within sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
  - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
  - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.
  - c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.
2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

#### **43-28-18.2. Disciplinary procedure.**

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board may also initiate a complaint and investigation on the board's motion.
2. The board may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.
3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.

4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-17.1, until the board determines to proceed with a disciplinary action.
5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.
6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.
7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

**43-28-18.3. Temporary suspension - Appeal.**

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the dentist would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the dentist's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the dentist, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the dentist.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, must be taken against the dentist who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The dentist is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The dentist may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.
5. A dental or medical record of a patient, or other document containing personal information relating to a patient, which is obtained by the board is confidential.

**43-28-19. Revocation of license and certificate - Proceedings, how initiated - Service of notice and hearing.**

Repealed by S.L. 2009, ch. 369, § 31.

**43-28-20. Plea - Answer - Trial of issues - Witnesses and cost.**

Repealed by S.L. 2009, ch. 369, § 31.

**43-28-21. Determination - Order - Appeal and review.**

Repealed by S.L. 2009, ch. 369, § 31.



**43-28-22. Reinstatement of license - Renewal of certificate - When issued - Fees.**

Repealed by S.L. 2009, ch. 369, § 31.

**43-28-23. Notice to board of change of address.**

Within thirty days after a licensed and registered dentist changes the dentist's place of business, the dentist shall notify the executive director of the board of the new address. The notice must be given by certified mail and return receipt requested. Such licensed and registered dentist may not practice dentistry in the state for more than thirty days after such removal without giving such notice.

**43-28-24. Duplicate license and certificate - When issued - Fee.**

If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate for a fee established by rule.

**43-28-25. Unlawful acts - Penalty.**

It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
  - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
  - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
  - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
  - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

**43-28-26. Punishment for misdemeanors.**

Repealed by S.L. 1975, ch. 106, § 673.

**43-28-27. Fees.**

All license fees, registration fees, and other fees authorized to be assessed and collected by the board must be established by rules adopted by the board.